

## § 29.520

### § 29.520 Referral for litigation.

The Department may refer to the Justice Department for litigation overpayment debts which cannot be compromised or waived, or on which collection activity cannot be suspended or terminated, and which the Department has been unable to recover pursuant to the collection activity described in § 29.511 through § 29.519. (See 31 CFR part 904.) Such debts should be referred to the Justice Department as early as possible, but at least within 1 year of the date such debts last became delinquent. In the case of overpayments arising from fraud, misrepresentation, or the presentation of a false claim, referral should be made to the Justice Department immediately. (See 31 CFR 900.3(a).) Referral of a debt to the Justice Department will suspend processing under § 29.511 through § 29.519 of this subpart.

#### STANDARDS FOR WAIVER OF OVERPAYMENTS

### § 29.521 Conditions for waiver and other adjustments.

(a) *General.* Overpayments made from the Retirement Funds will be recovered unless there is substantial evidence that the individual from whom recovery is to be made is eligible for waiver.

(b) *Waiver.* The Department may waive an overpayment from the Retirement Funds (provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the debtor) under sections 11021(3) or 11251(c)(2)(B) of the Act when it is established by substantial evidence that the individual from whom recovery is to be made—

(1) Is not at fault in causing or contributing to the overpayment, and

(2) Recovery would be against equity and good conscience.

(c) *Adjustment in the installment schedule.* (1)(i) An overpayment will not be waived because of financial hardship if a reasonable installment schedule can be established for repayment of the debt by adjusting the installment schedule originally established.

(ii) For example, if the Department finds that the original installment schedule—24 installments at \$125 each—causes the debtor financial hard-

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ship, but that repayment in 60 installments at \$50 each does not, it may adjust the installments and recover the debt in full.

(2) Where it has been determined that an individual is ineligible for a waiver, but the individual has shown that collection action pursuant to the original installment schedule would cause him or her financial hardship, the Department may—

(i) Adjust the installment schedule if the individual shows that it would cause him or her financial hardship to make payments at the rate initially scheduled by the Department; or

(ii) Terminate the collection action under 31 CFR 903.3 if the costs of collecting the debt are anticipated to exceed the amount recoverable.

### § 29.522 Fault.

(a) *General rule.* A debtor is considered to be at fault if he or she, or any other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

(i) The debtor's age;

(ii) The debtor's physical and/or mental condition; and

(iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they

are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reasonable person standard will take into account the objective factors set forth in paragraph (a)(3) of this section.

#### **§ 29.523 Equity and good conscience.**

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

#### **§ 29.524 Financial hardship.**

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, *i.e.*, when it is incon-

venient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

#### **§ 29.525 Ordinary and necessary living expenses.**

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

#### **§ 29.526 Waiver precluded.**

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

### **PART 30—TARP STANDARDS FOR COMPENSATION AND CORPORATE GOVERNANCE**

Sec.

30.0 Executive compensation and corporate governance.

30.1 Q-1: What definitions apply in this part?

30.2 Q-2: To what entities does this part apply?

30.3 Q-3: How are the SEOs and the most highly compensated employees identified